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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,800

10/10/2006

Kazuki Honda

MAT-8914US

4807

52473

7590

04/20/2009

RATNERPRESTIA

P.O. BOX 980

VALLEY FORGE, PA 19482

EXAMINER

PRITCHARD, JASMINE L

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

04/20/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/599,800	<b>Applicant(s)</b> HONDA ET AL.	
	<b>Examiner</b> JASMINE PRITCHARD	<b>Art Unit</b> 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-8 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/4/2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/10/2006, 6/20/2007, 12/22/2008 and 1/30/09</u> .           | 6) <input type="checkbox"/> Other: _____                          |



## **DETAILED ACTION**

### ***Response to Arguments***

#### **Regarding the claim rejections under 35 U.S.C §103(a):**

Applicant's amendments, see claims, filed 2/4/2009, with respect to amended claims 1 and 8 have been fully considered and are persuasive. The rejection of claims 1-8 under 35 U.S.C §103(a) has been withdrawn.

#### **Regarding the Double Patenting Rejections:**

Applicant's arguments filed 2/4/2009 have been fully considered but they are not persuasive.

On pages 7 and 8 of Applicants Arguments/Remarks, the applicant states "Applicants believe that the reference to U.S. Patent No. 7,362,877 is an inadvertent error and that the double patenting rejection relates to the U.S. 11/570,550 application."

Starting on page 5 of the Non-final Rejection mailed on 11/12/2008 the Examiner made a provisional statutory obviousness-type double patenting rejection over claims 1 and 6 of copending Application No. 11/570,550. However the Examiner failed to include the following statement to explain the type of rejection:

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter.

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See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1 and 8 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1 and 6 of copending Application No. 11/570,550. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

However in pages 5-7 the provisional statutory obviousness-type double patenting rejection was made in table form over claims 1 and 6 of copending Application No. 11/570,550.

The Examiner directs the applicant to the bottom of page 4 of the Non-final Rejection mailed on 11/12/2008 under Double Patenting. The Examiner made a nonstatutory obviousness-type double patenting rejection over claims 1 and 6 of U.S. Patent 7,362,877 B2, see below:

*Claims 1 and 8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 6 of U.S. Patent No. 7,362,877 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because they both provide means whereby the stopper being configured to restrict bending of the sheet metal constituting the terminal within a threshold value of reversibility of a material of the metal.*

On page 8 of Applicants Arguments/Remarks, the applicant states “Applicants request this provisional rejection be held in abeyance.”

The Examiner respectfully maintains both the provisional statutory obviousness-type double patenting rejection over claims 1 and 6 of copending Application No. 11/570,550 and the nonstatutory obviousness-type double patenting rejection over claims 1 and 6 of U.S. Patent 7,362,877 B2.

### ***Allowable Subject Matter***

Claims 1-8 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The closest prior art, Nagata et al. (US PGPub 2005/0201587 A1) discloses a speaker with a pair of plate-like leg portions opposed to each other in longitudinal direction of the frame, so that the leg portions exert a stopper function of preventing the terminals from being bent beyond the reversible limit. The present invention is directed to an electro-acoustic converter comprising a stopper having adjacent portions that protrude from a surface of the frame where the contact portion of the terminal protrudes, a portion of the terminal being disposed between the adjacent portions of the stopper wherein the stopper is configured to restrict bending of the sheet metal constituting the terminal within a threshold value of reversibility of a material of the metal. The prior art fails to anticipate or render the independent claims obvious.

### ***Conclusion***

This application is in condition for allowance except for the following formal matters:

- 1) Timely filing of a Terminal Disclaimer.

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 25 USPQ 74, 453 O.G. 213, (Comm'r Pat. 1935).

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to JASMINE PRITCHARD whose telephone number is (571)270-3712. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 571-272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jasmine Pritchard/  
Examiner, Art Unit 2614

/Brian Ensey/  
Primary Examiner, Art Unit 2614  
April 17, 2009

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